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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,704	05/24/2004	Alex Colvin	81100109	3703

46535 7590 06/28/2007

BIR LAW, PLC/FGTL  
13092 GLASGOW CT.  
PLYMOUTH, MI 48170-5241

EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED: 06/28/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

10/709,704

Applicant(s)

COLVIN ET AL.

Examiner

Eric S. McCall

Art Unit

2855

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

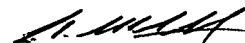
The Appeal Brief filed on 28 February 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

  
Eric S. McCall  
Primary Examiner  
Art Unit: 2855

Continuation of 10. Other (including any explanation in support of the above items):

On Oct. 16, 2006, the Appellant submitted an Appeal Brief on which the Examiner acted. In the Appeal Brief, the Appellant stated that the rejection under 35 USC 103(a) stands or falls with the rejection under 35 USC 102(b) and as such no separate arguments were provided. The Examiner's Answer was prepared reflecting such a position and submitted. The Appellant then filed a Reply Brief.

However, the office then mailed a Notice of Non-Compliant Appeal Brief on Feb. 23, 2007. The Appellant then filed another Appeal Brief on Feb. 28, 2007 going beyond what was needed for correction. The Appellant changed the scope of the Appeal Brief and now set forth that the rejection under 35 USC 103(a) does not stand or fall with the rejection under 35 USC 102(b). The Appellant has now provided extensive arguments addressing the "103" rejection that were never addressed in the Examiner's Answer because such arguments were not present in the acted-upon Appeal Brief.

The Appellant needs to correct the deficiencies listed in the office's notice of Feb. 28, 2007 without changing the scope of the Appeal Brief because the Examiner's Answer has already been established and set forth.